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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/444,261	11/22/1999	DANIEL JACOFF		8417

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EXAMINER

VERBITSKY, GAIL KAPLAN

ART UNIT	PAPER NUMBER
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2859

DATE MAILED: 04/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/444,261

Applicant(s)

Jakoff

Examiner

Gail Verbitsky

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– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on Jan 24, 2002

2a) ☐ This action is FINAL.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1-25 and 35-45 is/are pending in the application

4a) Of the above, claim(s) _____ is/are withdrawn from consideration

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) 1-19, 21-25, and 35-45 is/are rejected.

7) ☒ Claim(s) 20 is/are objected to.

8) ☐ Claims _____ are subject to restriction and/or election requirements

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

a) ☐ All b) ☐ Some* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

15) ☐ Notice of References Cited (PTO-892)

18) ☐ Interview Summary (PTO-413) Paper No(s). _____

16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

19) ☐ Notice of Informal Patent Application (PTO-152)

17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

20) ☐ Other: _____

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DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "said walls being tangent to the outer wall" must be shown or the feature(s) canceled from the claim(s) 9-12, 21-25 and 43-45. No new matter should be entered.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 2-12, 21-25 and 43-45 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In this case,

Claim 2: the claim language is confusing because it is not clear how the opposed spaced sides are at 90 degrees from the apex. Perhaps applicant means that lines or planes that are tangent to the opposed sides are at 90 degrees from the apex. Appropriate clarification is required. Furthermore, please note that in the rejection on the merit, Examiner considers that planes or lines tangent to

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the opposed spaced sides meet at 90 degrees at the apex (see Fig. 3 of the attachment to the Office Action).

Claims 9-12, 21-25, 43-45: the claim language is confusing because it is not clear how "said walls being tangent to the outer wall" as stated in claims 9 and 21.

Claims 24: Perhaps applicant should insert --said at least one vial is-- after "wherein" and delete "and" in line 1 in order to clearly describe the invention.

Claims 3-8, 22-25 are rejected by virtue of their dependency on claims 2 and 21 respectively.

Claim Rejections - 35 USC § 102

4.. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Johansson (Sweden 148436) [hereinafter Johansson].

Johansson discloses in Figs. 1-3 a device comprising a straight cylindrical outer wall, a curved inner cavity A having a substantially uniform arc in a cross section throughout its length, the arc having an apex 5, the apex is closer to the cylindrical outer wall than to the opposed wall G of the inner cavity. Johansson also discloses a cup B, opposed ends C spaced from the apex. At least one end of the cavity terminates in a wall D. Tangents to opposed spaced sides E and F meet

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at 90 degrees at the apex (Fig. 3). The planes tangent to the sides of the cavity are parallel to each other and at 90 degree angles to the plane tangent to the apex (Fig. 3). (The numerals A-G have been added by the Examiner, see attachment to the Office Action).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 8 and 35-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Johansson in view of Johnson (U.S. 3750301).

Johansson discloses the device as stated above in paragraph 5.

Johansson does not disclose the limitations of claims 8-9 and 35-42.

Johnson discloses a device in the field of applicant's endeavor comprising keys 14 extending from the outer wall in opposite direction along the length of the wall and being adjacent to both ends. Johnson also discloses side walls 4, 9 and A. The side walls 4 and 9 are substantially tangent to the outer wall of the vial, the side wall 6 is parallel to the plane B tangent to the apex of the cavity. Johnson also discloses a pair of opposed parallel rails 7 and a vial receiving web 6 connecting the rails together.

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Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the device disclosed by Johansson, so as to have keys, as taught by Johnson, in order to provide a device with a good support on the surface and be able to align the device with horizontal.

With respect to claims 35-42: the method steps will be met during the normal manufacturing process of the device stated above.

8. Claims 13-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hutchins et al. 5199177 [hereinafter Hutchins] in view of Johansson.

Hutchins discloses in Fig. 1 and abstract a device comprising a vial 30 positioned in a vial-receiving aperture (opening) in a web 24 having notches for supporting the vial, the web is perpendicular to and connecting two opposed parallel surfaces (rails). Since the vial is positioned parallel to the rails, the plane tangent to its apex A will be parallel to the rails also.

Hutchins does not disclose all the limitations of claims 13-19.

Johansson discloses in Figs. 1-3 a device comprising a straight cylindrical outer wall, an inner cavity A having a substantially uniform arc in a cross section throughout its length, the arc having an apex 5, the apex is closer to the cylindrical outer wall than to the opposed wall G of the inner cavity. Johansson also discloses a cap B, opposed ends C spaced from the apex. At least one end of the cavity terminates in a wall D. Tangents to opposed spaced sides E and F meet at 90 degrees at the apex (Fig. 3). The planes tangent to the sides of the cavity are parallel to each

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other and at 90 degree angles to the plane tangent to the apex (Fig. 3). (The numerals A-G have been added by the Examiner, see attachment to the Office Action).

Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace a vial disclosed by Hutchins with a vial, as taught by Johansson, because both of them are alternate types of vials which will perform the same function of determining level of a device being investigated, if one is replaced with the other.

Allowable Subject Matter

9. Claim 20 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments with respect to claims 1-25 and 35-45 have been considered but are moot in view of the new ground(s) of rejection.

Johansson discloses a curved inner cavity. The combination of Johansson with the prior art cited discloses the claimed invention.

With respect to claim (method): applicant states that the outer cylindrical wall and the inner wall are being made simultaneously. This limitation is absent any criticality, because it is

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very well known in the art that majority of cylindrically shaped structures (glass bottle, pipe, etc) can be made by simultaneously making an inner and outer surfaces.

Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited in the PTO-892 and not mentioned above disclose related devices and methods.

12. *It is not possible to apply the prior art of record to claims 9-12, 21-25 and 43-45 due to the reason stated above in paragraph 4.*

13. Any inquiry concerning this communication should be directed to the Examiner Verbitsky whose telephone number is (703) 306-5473.

Any inquiry of general nature should be directed to the Group receptionist whose telephone number is (703) 308-0956.

GKV

March 27, 2002



Diego Gutierrez

Supervisory Patent Examiner

TC 2800